

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

David Alan Metcalfe,

Plaintiff

v.

Brian E Williams, et. al.,

Defendants

Case No. 2:19-cv-01793-JAD-DJA

**Order Dismissing  
and Closing Case**

Plaintiff David Alan Metcalfe brings this civil-rights lawsuit to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. Metcalfe filed a notice of change of address indicating that he was no longer incarcerated.<sup>1</sup> On February 16, 2022, this court denied Metcalfe application to proceed in forma pauperis for prisoners as moot and ordered Metcalfe to file a fully complete application to proceed in forma pauperis for non-prisoners or pay the full filing fee of \$400 within 30 days.<sup>2</sup> That deadline expired, and Metcalfe did not pay the fee, file a complete application to proceed in forma pauperis for non-prisoners, or otherwise respond to the court's order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.<sup>3</sup> A court may dismiss an action based on a party's failure to obey a court order or comply with local

<sup>1</sup> ECF No. 17.

<sup>2</sup> ECF No. 18.

<sup>3</sup> *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

1 rules.<sup>4</sup> In determining whether to dismiss an action on this ground, the court must consider: (1)  
 2 the public's interest in expeditious resolution of litigation; (2) the court's need to manage its  
 3 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
 4 cases on their merits; and (5) the availability of less drastic alternatives.<sup>5</sup>

5 The first two factors, the public's interest in expeditiously resolving this litigation and the  
 6 court's interest in managing its docket, weigh in favor of dismissal of the plaintiff's claims. The  
 7 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a  
 8 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an  
 9 action.<sup>6</sup> The fourth factor—the public policy favoring disposition of cases on their merits—is  
 10 greatly outweighed by the factors favoring dismissal.

11 The fifth factor requires the court to consider whether less drastic alternatives can be used  
 12 to correct the party's failure that brought about the court's need to consider dismissal.<sup>7</sup> Courts  
 13 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must  
 14 explore possible and meaningful alternatives.”<sup>8</sup> Because this court cannot operate without  
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16 <sup>4</sup> *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to  
 17 comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal  
 for lack of prosecution and failure to comply with local rules).

18 <sup>5</sup> *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting  
 19 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

<sup>6</sup> See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

20 <sup>7</sup> *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less  
 21 drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor);  
 22 accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the  
 23 persuasive force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of last drastic  
 alternatives prior to disobedience of the court's order as satisfying this element[,]” i.e., like the  
 “initial granting of leave to amend coupled with the warning of dismissal for failure to  
 comply[,]” have been “eroded” by *Yourish*).

<sup>8</sup> *Henderson*, 779 F.2d at 1424.

1 collecting reasonable fees, and litigation cannot progress without a plaintiff's compliance with  
2 court orders, the only alternative is to enter another order setting another deadline. There is no  
3 indication that Metcalfe did not receive the court's previous order or that he needs additional  
4 time to respond, so issuing another order will only delay the inevitable and further squander the  
5 court's finite resources. Setting another deadline is not a meaningful alternative given these  
6 circumstances. So the fifth factor favors dismissal.

7 Having thoroughly weighed these dismissal factors, I find that they weigh in favor of  
8 dismissal. IT IS THEREFORE ORDERED that **THIS ACTION IS DISMISSED** without  
9 prejudice based on the plaintiff's failure to pay the filing fee or file a non-prisoner application to  
10 proceed in forma pauperis in compliance with the court's order. The Clerk of Court is directed  
11 to **ENTER JUDGMENT** accordingly and **CLOSE THIS CASE**. If David Alan Metcalfe  
12 wishes to pursue his claims, he must file a complaint in a new case, and he must pay the fee for  
13 that action or file a complete application to proceed in forma pauperis for non-prisoners.

14 Dated: April 5, 2022

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U.S. District Judge Jennifer A. Dorsey